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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/573,279	01/09/2007	Takayuki Kondo	200380-9054	9404
1131	7590	11/13/2009	EXAMINER	
MICHAEL BEST & FRIEDRICH LLP			YUN, EUGENE	
Two Prudential Plaza				
180 North Stetson Avenue, Suite 2000			ART UNIT	PAPER NUMBER
CHICAGO, IL 60601			2618	
			MAIL DATE	DELIVERY MODE
			11/13/2009	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/573,279	KONDO, TAKAYUKI	
	<b>Examiner</b>	<b>Art Unit</b>	
	EUGENE YUN	2618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 21 September 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-16 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-16 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 9/21/2009 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

3. Claims 1, 3-6, 8-11, and 13-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudrapatna (U.S. Pub. No. 2004/0092233 A1) and Chen (US 7,443,816) and further in view of Gopalakrishnan et al. (US 6,859,446).

Referring to claim 1, Rudrapatna discloses a mobile communication system in which variable rate transmission is performed over a downlink radio channel (see title, abstract, para[009], [0015]) among a base station control apparatus (20 of fig.1), a radio base station (14 of fig.1), and a mobile station (16 of fig.1), the radio base station (14 of fig.1) comprising:

(i.e. demultiplexer 44, determine and provide transmission information rate according to received power control rate command from the wireless terminal unit (WTU) i.e. mobile unit)

Rudrapatna does not teach a transmission rate determining part for determining a transmission rate in accordance with a size of transmission data to the mobile station. Chen teaches a transmission rate determining part for determining a transmission rate in accordance with a size of transmission data to the mobile station (see col. 3, lines 5-13). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Chen to said device of Rudrapatna in order to eliminate unnecessary reductions in transmission time between base station and mobile station.

The combination of Rudrapatna and Chen does not teach a transmission power changing part for changing a transmission power of the transmission data in accordance with a predicted error correction gain difference depending on the determined transmission rate. Gopalakrishnan teaches a transmission power changing part for changing a transmission power of the transmission data in accordance with a predicted error correction gain difference depending on the determined transmission rate (see col. 7, lines 50-65). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Gopalakrishnan to the modified device of Rudrapatna and Chen in order to provide faster estimations of error which will speed up the adjustments of transmission power.

Claims 6, 10, and 16 have similar limitations as claim 1.

Referring to Claims 3 and 13, Chen further discloses variable rate (rate increment / decrement) control is performed by setting (i.e. incrementing) and setting (i.e. attaching) rate information by the demultiplexer specifying a transmission rate by each transmission frame in accordance with the transmission data size which is obtained from the mobile station among the base station control apparatus, the radio base station and the mobile station (see col. 1, lines 46-54).

Referring to Claims 4 and 14, Chen further discloses the mobile station includes a transmission rate determining part for estimating a transmission rate from a power distribution of a received signal from base station (see col.59, lines 49-60).

Referring to Claim 5, Rudrapatna further discloses the communication system is a CDMA (Code Division Multiple Access) radio network in which variable rate transmission is performed over a downlink channel (see fig. 1,2,3 and para [0014],[0015]).

Referring to Claim 8, Rudrapatna further discloses the radio base station (14 of fig. 2) further comprising:

a transmission frame producing part (44 of fig.2) for encoding by the encoder (32 of fig.2) the transmission data into a transmission frame and a transmitting part (38 of fig. 2) for transmitting the determined transmission rate and the encoded transmission frame in accordance with the determined transmission power (see fig. 1,2 and para [0019],[0022],[0023],[0025]).

Referring to Claim 9, Rudrapatna further discloses the communication system is a CDMA (Code Division Multiple Access) radio network in which variable rate

transmission is performed over a downlink channel (see fig. 1,2,3 and para[0014],[0015]).

Referring to Claim 11, Chen also teaches the step of determining the transmission power carried out with reference to one or more tables prepared in advance that show the relations among the transmission data size, the error correction gain difference, and a change amount of the transmission power (see table in fig. 4).

Referring to Claim 15, Rudrapatna further discloses the communication system is a CDMA (Code Division Multiple Access) radio network in which variable rate transmission is performed over a downlink channel (see fig. 1,2,3 and para[0014],[0015]).

4. Claims 2, 7, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rudrapatna, Chen, and Gopalakrishnan and further in view of Tsien et al. (US 7,328,037).

Referring to Claims 2, 7, and 12, Rudrapatna does not teach the transmission power is reducing when the transmission rate is large, and transmission power is increasing when the transmission rate is small. Tsien teaches the transmission power is reducing when the transmission rate is large (see ABSTRACT), and transmission power is increasing when the transmission rate is small (see col. 5, lines 55-63). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the teachings of Tsien to the modified device of Rudrapatna, Chen, and Gopalakrishnan in order to mitigate weak transmission signal.

***Response to Arguments***

5. Applicant's arguments with respect to claims 1-16 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to EUGENE YUN whose telephone number is (571)272-7860. The examiner can normally be reached on 9:00am-6:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duc Nguyen can be reached on (571)272-7503. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eugene Yun

Application/Control Number: 10/573,279  
Art Unit: 2618

Page 7

Primary Examiner  
Art Unit 2618

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